



FISHER | RUSSELL

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June 8, 2023

Mr. Sean Murphy
Ms. Denise Pagels
716 Bridgeport Dr.
Farragut, TN 37934

Via Hand Delivery

Re: Notice to Remove Yard Signs

Mr. Murphy and Ms. Pagels:

This firm represents the Brixworth Homeowner's Association, Inc. (the "HOA"). **This letter serves as a final demand that you remove the three (3) yard signs displayed in your yard (see enclosed photo) on or before 5:00 P.M. this Friday, June 9, 2023.**

As outlined below, the signs violate the Declaration of Covenants and Restrictions Brixworth Subdivision, as amended (the "Covenants"). To be sure, as joint owners of a lot in the Brixworth Subdivision, you are subject to the Covenants.

Article XVIII of the Covenants states the following with respect to restrictions of displaying signs on any lot in the neighborhood:

ARTICLE XVIII

SIGNS

No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs of no larger size used by the builder to advertise the property during the construction and sales period.

The three signs displayed on your lot are in clear violation of this Article XVIII. The signs you posted are not professional signs, are larger than permitted, and do not advertise the property for sale/rent or advertise a builder during the construction and sale period.

In addition, the three signs displayed on your lot likely constitute a nuisance and are prohibited under Article XIV of the Covenants:

ARTICLE XIV

NUISANCES

No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

As you know, several neighbors have complained that the signs are offensive. These complaints have been made to the HOA Board as well as the Town of Farragut. And while you may not agree that they are offensive, the standard for determining whether a sign is or is not offensive is based upon the view of an average reasonable person. Given the number of complaints and the content of the signs, there is no question that the signs are a nuisance in violation of Article XIV.

It is my understanding that one reason for your refusal to remove the signs is based upon a Tennessee statute known as the Tennessee Freedom of Speech Act, T.C.A. § 2-7-143 (the “Free Speech Act”). Please be advised the the Free Speech Act is not applicable in this instance for several reasons. First, the statute’s protection extends only “during the period beginning sixty (60) days before the first day voting begins...for an election until the first day after voting ends for such election.” Second, the Free Speech Act restricts a homeowners’ association from prohibiting the display of political or campaign posters or signs. The signs posted on your lot are not political signs or campaign signs. Third, the Free Speech Act in fact authorizes homeowners’ associations to adopt reasonable covenants and restrictions with respect to the placement, size, and number of political and campaign signs. Finally, and most importantly, the Free Speech Act only applies to homeowners’ associations whose covenants, restrictions, and/or rules are executed or modified after July 1, 2017. Here, the Brixworth Covenants were executed in 1989 and last amended in the year 2000. Suffice it to say, the Free Speech Act does not apply to this situation and does prevent the HOA from enforcing its Covenants.

Finally, with respect to enforcement of the Covenants, Article IV, Section 3, provides the HOA the power to enforce the Covenants by suspending an HOA members’ right to the enjoyment of the common areas “for any period not to exceed thirty (30) days for any infraction of its published rules.”

Accordingly, if you fail to remove the signs displayed in your yard by 5 P.M. this Friday, June 9, 2023, your access to the common areas (i.e., the pool, tennis courts, clubhouse, basketball courts, social events, etc.), as well as your access to the neighborhood electronic platforms (i.e., email newsletter, Facebook page, etc.) will be prohibited for 30 days. Moreover, failure to remove the signs by the end of the 30-day period will result in the issuance of another 30 day suspension to repeat until the violation is cured.

This letter is not intended as a full recitation of the facts or a complete review of applicable law. Moreover, nothing contained in this letter is or shall be deemed to be a limitation, restriction, or waiver of any of the HOA’s rights or remedies, either at law or in equity, in connection with any of the matters raised herein, all of which are expressly reserved.